

MINUTES
of the
LEGISLATIVE CONSUMER COMMITTEE
August 23, 2007
State Capitol, Room 137, Helena, MT

COMMITTEE MEMBERS PRESENT

Representative George Groesbeck, Chairman
Representative Walter McNutt, Vice Chairman
Senator Joe Tropila
Senator Terry Murphy

STAFF PRESENT

Robert A. Nelson, Consumer Counsel
Mary Wright, Attorney
Mandi Shulund, Secretary

VISITORS PRESENT

Cheryl Gillespie, Qwest
Todd Everts, Legislative Services Division

CALL TO ORDER

The meeting was called to order by Representative Groesbeck.

MINUTES OF THE PREVIOUS MEETING

MOTION: Representative McNutt moved approval of the May 31, 2007 meeting minutes.

VOTE: The motion passed unanimously.

MOTION: Senator Tropila moved to allow future summer meetings be casual attire.

VOTE: The motion passed unanimously.

BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES

CURRENTLY PENDING:

NorthWestern Energy

D2006.6.82-Joint Application of NorthWestern Corporation and BBIL for Approval of Sale and Transfer: BBI had learned of the work session discussion on possible action the Commission was going to take on this application and as a result, filed a Motion for Rehearing requesting to revise their proposal. The legal standard for requesting a rehearing is there needs to be a showing of change in facts or law since the hearing. In trying to meet this standard, BBI and NWE claimed that until that Commission work session they were not aware of what the standard of review would be for considering this application and they did not know what the Commission's specific concerns regarding the application were. BBI tried to meet what they viewed as new concerns in the standard of review by proposing, in a revised application, a Montana stand alone utility with the Commission having approving authority over any distribution of earnings that exceed 100% in any year. Other new proposals were a commitment of at least \$380 million in transmission and distribution investment over 5 years, \$200 million in generation over those 5 years, a \$20 million immediate rate credit over 3 years, \$5.5 million of additional so called targeted economic benefits over 3 years and a commitment to honor existing collective bargaining agreements and to reduce the acquisition debt financing at the

holding company level to \$250 million. Parties responded to the Motion for Rehearing, with MCC suggesting there had been no change in law or facts, therefore the Applicant did not meet the standard for reopening the hearing. If the Commission would have granted the motion, it would have been very hard for them in the future to continue applying the standard that has existed for many years on what constitutes grounds for rehearing. Also, if the Commission decided to consider the merits of their proposal, new questions would arise regarding NWE becoming a stand alone Montana utility and what exactly that would mean and entail, including the detailed and complicated splitting of assets. The Commission denied the Motion and a Final Order was issued in August. In that order, the Commission included analysis of history of all major mergers and sales they had considered and affirmed their authority over sales and transfers. Bob felt that, despite BBI and NWE assertions, the standard of review had been thoroughly debated during the proceeding, with the parameters being clear, and the Commission applied a no harm standard. The Commission also affirmed the principal of original cost less depreciation or, in other words, in setting utility rates for the utilities investment, the Commission will only include in rates the original cost of the investment minus any depreciation that had been booked. Based on evidence at the hearing, the Commission concluded that despite BBI's statements otherwise, they would attempt to recover the acquisition premium from customers and in connection to Dr. Wilson's testimony, the Commission stated the damage that could occur to the company's equity position was compelling and believed that BBI had no intension of reserving funds at the utility level. The Commission found the acquisition model was held out by the company to investors and potential lenders as a plan of operation or indication of what revenues they would receive from the operations. The Commission stated that the \$435 million in goodwill booked as a result of the MPC purchase will be excluded from future equity determinations and concluded they had no confidence that any conditions could cover the risks presented by BBI ownership. MCC, in testimony, did not recommend denial of the application, but rather suggested conditions that could be imposed to make the application acceptable. Bob said that it has been MCC's long standing practice to be willing to talk to utilities

and applicants before the Commission about possible resolutions or compromises based on grey areas that always exist in these cases, this case being no exception. A substantial discussion took place prior to the hearing and a few brief discussions took place before and after the Motion for Rehearing was filed. NWE has since stated that they do not intend to offer themselves for sale.

D2007.7.82-Application for Increased Gas and Electric Delivery Service Rates: Due to the bankruptcy proceeding, it has been several years since NWE has filed a general rate case. This application pertains to noncommodity, or delivery costs, since the actual gas and electric purchase costs are treated in separate cost trackers and are flowed through on a monthly basis. A requested increase of \$10.5 million has been made for the gas utility and an increase of \$31.4 million has been requested for electric. A hearing is tentatively scheduled for 1/30/08 and Phase 2 of this application, the allocated cost of service and rate design filing, will be submitted early in 2008 and will determine how much of the revenues are paid by which customer classes. In this filing, NWE criticizes many traditional rate making principals and raised many policy issues for the Commission to consider. Senator Tropila mentioned that recently in the Great Falls Tribune there had been two letters from NWE customers questioning why bills were rising even though NWE had not recently received an increase. Bob said there would not have been any base increases but probably a slight commodity increase as a result of trackers and the reduction of the BPA credit. Bob said he would look at the letters.

D2007.4.35-Request for Approval of Affiliate Power Purchase Transaction: NWE and MCC have an agreement from a few years ago that was supposed to take affect 7/07 in which NWE would acquire 90 megawatts of Colstrip 4 power at \$35.00 per megawatt, which is a favorable price. NWE filed a proposal for a transaction with a subsidiary for sale and buy back of that power. Colstrip 4 is held by NWE but is no longer in rate base, so NWE wanted to make this transaction in the form of a subsidiary sale. MCC filed a Motion to Dismiss this application due to the fact that the price, term and quantity of power had already been approved and the

Commission did not need to provide any further action on the acquisition of that power. The Commission recently voted to dismiss this application and it is assumed that 90 megawatts of Colstrip 4 power is being applied to default supply at the approved prices.

D2007.5.46-Annual Application for Electric Tracker True-Up: Trackers are filed each month and every 12 months an annual review is done for the prior 12 months and a projection is done for the next 12 months. This application proposes a slight residential increase and an increase in deferred charge credit, which means NWE over collected for the prior 12 months so the over-collection is being credited back. Also in this application is a reduction in the BPA credit. This docket has been consolidated with last year's tracker so realistically the past 24 months will be reviewed. A hearing is scheduled for 12/19/07.

D2007.5.53-BPA Residential Exchange Credit Program: Senator Murphy asked Bob to explain the BPA credit. Bob said the BPA credit was enacted in the early 1980's and was an attempt to share the benefits of the Columbia Hydro Electric System with all residents in the Northwest. Generally, public utilities and cooperatives are required to receive low cost sales directly from BPA but through the BPA credit, investor owned public utilities are able to share the benefits. Historically Montana Power Company's average system cost was similar to BPA's cost so Montana did not qualify for the BPA credit but when changes were made in 1997 and again in 2002, Montana was able to gain the credit, which upset those already receiving the benefit and, after much debate, a settlement was reached on how much each party would receive. A Circuit Court decision stated that BPA did not appropriately handle the way the credits were calculated and vacated BPA's method for allocating those credits. BPA then said they could not certify under accounting rules that they were appropriately calculating the credits so they stopped paying anyone until a solution was reached. Senator Murphy asked, within Montana, if any company other than NWE is entitled to the BPA credit. Bob said that Cooperatives and Public Utilities are

entitled to the credit but NWE is the only investor owned utility benefiting. MCC participates in the process to try and get fair credit for Montana customers.

D2003.8.86, D2004.6.96, D2005.6.103-Consolidated Annual QF Compliance Filings:

Initially it appeared that QF filings would not have much impact on residential customers of NWE because MCC had entered into an agreement with some large QF projects hanging over MPC, with these large QF projects actually being the source for all stranded costs during restructuring in which \$20 million/yr. is still being paid over the next 20 years. MCC felt this issue had been resolved but nevertheless QF producers are having to make annual adjustments so filings are made every year with provisions for smaller or new QF's to provide power to NWE and the Commission had made 3 megawatts in size the limit. The Commission issued an order addressing the renewed interest in QF power and are trying to decide how NWE's new circumstances would impact avoided costs indicated by purchases from PPL and from market. The Commission increased the rate QF's might get from providing power to NWE and also increased the minimum size from 3 to 10 megawatts. The Commission recognized there was an additional cost of integrating wind so they fixed a \$7.50 megawatt hour wind integration cost that wind projects would have to take into account in their avoided costs and QF filings. MCC asked for reconsideration of those items because they could be harmful to ratepayers by ultimately driving up costs. The Commission issued an order in June agreeing that the eligibility threshold change should have been done in rulemaking instead of a contested case and indicated they would do just that. The Commission also agreed that there was not sufficient basis for establishing the \$7.50 wind integration cost and that a cost could not be determined from the record they had so they allowed the QF's proposing to provide wind power to NWE to either assume the integration responsibility or negotiate a cost with NWE. If costs could not be negotiated, then the dispute should come before the Commission for a resolution. There is a new QF docket pending now.

D2006.12.181- Request for Determination Regarding Return of Luzenac: Luzenac had requested determination of their cost under state law for returning to default supply. They have recently withdrawn this application.

D2007.7.80-Monthly Electric Tracker: The August Electric Tracker filed 7/16/07 resulted in a residential rate decrease to \$.05687/kwh (1.9%); The September Electric Tracker filed 8/15/07 resulted in a residential rate increase to \$.05735/kwh (.8%).

D2006.7.81-Monthly Gas Tracker: The August Gas Tracker filed 7/17/07 resulted in a residential rate decrease to \$10.23; The September Gas Tracker filed 8/15/07 resulted in a residential rate increase to \$10.31.

D2007.5.44-Annual Application for Gas Tracker True-Up: This docket is the gas tracker true-up for the 12 months ending June 07 and for the projected 12 months ending June 08. In this case, as well as with the electric tracker, the unusual issue of the construction of demand side management investments and lost revenues related to those investments needs to be addressed. In the past, MCC has opposed the inclusion of lost revenues as a single item adjustment due to violating the matching principal applied to utility rate making. The Commission, nonetheless, went with a lost revenue adjustment although MCC had raised the concern that the method companies were using to calculate the lost revenues was unclear and the Commission required, in the electric tracker in particular, a study of the lost revenues and how they were being calculated, which will be presented in this docket.

Montana Dakota Utilities

D2007.5.57-Application for Accounting Order: This case relates to fuel purchase power expenses. Again the Commission has, for many years, treated commodity costs for gas utilities separately from the base rates or non commodity costs. This is not the case for the electric utilities because this kind of tracking violates the matching principal. In other words, it is not clear if revenue requirement is increasing

if revenues are increasing at the same time. It was once believed, with the gas utilities and the gas commodity, that there were extraordinary circumstances justifying departing from that general principal because gas costs were so volatile and were such a large portion of the companies' cost so the Commission has tracked these separately since the late 1970's. Around 2002 the Commission adopted an electric cost tracker for NWE because they had to purchase so much of their power from the volatile market whereas in the past, electric costs had been fairly predictable. MDU still does not have an electric cost tracker in place because the Commission has not viewed electric costs as being a volatile cost to MDU and feels that treating electric costs as a tracker would violate the matching principal. In the current case, MDU is requesting a power cost tracker and to support that, they filed in advance, an application for accounting order so if the Commission does ultimately approve that cost tracker, MDU could retroactively recover costs they are currently incurring. The Commission issued an order in July denying this application, indicating that the trackers were an exception to test year principals, specifically the matching principals, and would require extraordinary and exceptional circumstances that had not been shown in the application.

D2007.7.79-Application for Increased Electric Rates: In this filing, MDU has requested a power cost tracker since they are having to purchase more power from market and may be facing more volatility than they have in the past. Bob feels this could be due to the expiration of a base load contract MDU had with Basin Electric and it is unclear why MDU did not foresee that expiration and replace that contract with another stable base load contract. MDU is requesting roughly a \$7.8 million increase, or 22% overall. Unlike the NWE case, this is a 22% overall increase because the commodity and non commodity costs are not separated and MDU did file allocated cost and rate design proposals so there are different impacts for different classes of customer. MDU is also requesting a margin sharing adjustment, which is something that has not been adopted. In the past, when utilities have excess power, they made a sale and flowed that revenue back as a credit to customers but in this case, MDU is proposing to split and track that revenue so

customers get 80% of the benefits and MDU would keep 20%. As in the NWE case, MDU filed a depreciation study, which utilities typically do every 5-10 years, but it has been closer to 20 years since MDU last filed a depreciation study. MCC will be reviewing this case.

D2007.5.56-Monthly Gas Cost Tracker: The July Gas Tracker filed 6/8/07 resulted in a residential rate decrease to \$.6.34/dk.

Energy West

D2007.6.65-Annual USB Report and Reconciliation: Last year MCC entered into an agreement with EWM revising their USB and low income support programs. EWM used to have different ways of distributing the benefits, but with the agreement, all charges were consolidated into one charge and directed to specific programs agreed to by interested persons. It was also agreed that EWM would track these costs and file annual reports. This filing is the first annual report, for period ending 3/07, and includes a request to continue the current charge of about 1.25% of their revenues. MCC will be reviewing this filing.

D2007.5.55-Petition for Authority to Issue Securities: Utilities are required to get Commission approval when issuing long term securities. Since the NWE Bankruptcy, MCC reviews these filings a bit closer and utilizes them as an opportunity for review of the utilities financial integrity.

D2007.7.75-EWM Monthly Gas Trackers: The July Gas Tracker filed 6/7/07 resulted in a residential rate increase to \$9.36 Mcf; The August Gas Tracker filed 7/5/07 resulted in a residential rate decrease to \$8.24 Mcf; The September Gas Tracker filed 8/9/07 resulted in a residential rate decrease to \$7.51 Mcf.

FERC

FERC Docket Nos. ER99-3491 and EL05-124 Triennial Market-Based Rate Update:

MCC has been involved in this case since 2000. The history of this case goes back to when Montana required that MPC generation be removed from rate base and FERC, not the Commission, would then be responsible for regulation of generation. FERC has an obligation under the Federal Power Act to ensure generation costs be just and reasonable and FERC has interpreted their responsibilities under that act, in light of other national initiatives going on regarding restructuring, ultimately concluding that if a competitive market could be established in a certain geographic market area, their obligations under the Federal Power Act to ensure just and reasonable rates would be satisfied if they gave market based rate authority to federally regulated generators. FERC also concluded that rates would be just and reasonable because of the competition constraining those rates so FERC granted market based rate authority to PPL for its generation in Montana. Because FERC has the ongoing obligation of ensuring rates are just and reasonable, they require utilities that are authorized to make market-based sales to prove every three years that markets remain competitive so rates are still just and reasonable. This case involves the Triennial Market Based Rate update filed by PPL under that FERC requirement. MCC reviewed this filing and argued to FERC there was not a competitive market so market based rates were not justified. The FERC staff issued a deficiency letter 3/05 basically agreeing with MCC and required additional information be filed by PPL. After PPL filed the additional information 9/05, FERC issued an order continuing to agree with MCC, stating that PPL had failed their so called market screens and presumed there was not a competitive market. About this same time, personnel changes took place at FERC. MCC's argument was information submitted in PPL's new filing did not address the long term market and NWE needed to get long term contracts from PPL due to previous long term contracts needing to be replaced because of expiration in 2007. PPL addressed historical information and short term purchases in the Mid-C market, their theory being if long term purchases became too expensive, NWE could always replace long term purchases with short term, and the short term market was competitive. Ultimately FERC issued an order agreeing with PPL which basically revised the position FERC had previously taken. MCC filed a request for rehearing 6/06 and a

month later FERC issued an order denying that request by reiterating their previous stance and saying that new entrants could build power plants in Montana. Bob feels this is a very unrealistic analysis for FERC to make based on historical not current data. MCC filed a petition for review in the Ninth Circuit Court of Appeals 8/07 and the PSC has since joined in on this case.

FERC Docket RM04-07, Order 697, Market Based Rates for Wholesales of Electric Energy, Capacity and Ancillary Services by Public Utilities: This item relates to MBR (market based rates). FERC has taken a general look at their market based rate authority rules, Bob feels, in part due to the issues MCC has raised over the last several years. FERC initially indicated they were going to make revisions to the rules but as a result of their review, issued Order 697 6/07 basically leaving the rules as they are. MCC requested a rehearing on that order, without any great expectations that FERC would change their mind at this point, but Bob felt it was important to preserve MCC's rights due to the pending litigation in the Ninth Circuit. Senator Tropilla asked Bob if FERC appointments were political and how the appointments were handled. Bob said that the positions were presidential appointments, therefore being very political. Generally the people appointed are subject to confirmation so they are quite knowledgeable but also have a certain philosophical angle that the administration supports.

Havre Pipeline Company

D2007.8.93-Havre Pipeline Company Application for Annual Cost Tracker Decrease: Havre Pipeline Company serves some farm tap customers in the hi-line area and many years ago MCC and HPC entered into a stipulation regarding how they would set their annual rates. This filing falls under that agreement and HPC is proposing a gas cost decrease. There is a small non gas cost charge of roughly 25 cents, but basically it is all gas costs that those customers see. This filing indicates a general decline over the last year but rates are still quite high.

Utility Solutions

D2005.11.163 and D2005.11.164-Utility Solutions Application to Implement Initial Water and Wastewater Rates: Utility Solutions is located in Gallatin County. Once a water system is built, they become a regulated utility but have no historical data behind them. What the Commission generally does in these cases is grant interim approval for one year and at that time the utilities file for permanent approval.

MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF TELECOM CASES CURRENTLY PENDING:

Eligible Telecommunications Carrier Cases

ETC cases are where companies, at this point mainly wireless companies, apply to compete with the wire line incumbents and perhaps other wireless companies and receive subsidies to do so.

D2004.1.6 - Triangle Communications Systems, Inc: Triangle is an affiliate company of the Triangle Telephone Cooperative Association with North Central Montana Communications. This case began in 2004 and a hearing was held 8/06. The Commission issued a final order basically favoring the application. Both MCC and the Montana Telecommunication Association requested reconsideration of that order but on 8/14 the Commission denied those motions.

D2007.4.37-Swiftel, LLC: Swiftel operates primarily in the south and their business plan basically asks for federal subsidies to serve low income customers. The Commission dismissed this application because it did not comply with Montana law but Swiftel may file again at a later date.

D2007.2.18-MTPCS, LLC d/b/a/Chinook Wireless: Chinook Wireless bought the wireless assets of Three Rivers and of Blackfoot Cooperatives and are asking the ETC subsidies to provide service in Blackfoot, Three Rivers, and Qwest service

areas, even though they have licenses to serve almost the entire state of Montana. This case has been stalled in discovery disputes but the procedural schedule has been reinstated. MCC filed testimony and a hearing is scheduled for 10/07.

Qwest

N2006.6.81-Qwest Tariff Transmittal 06-10 Residence and Business Customer Incentive Programs: This application by Qwest asks to extend and in some cases change its competitive response program, which is a program for Qwest to offer customers incentive to either stay with or return to Qwest. Other companies do this as well but Qwest's program, at this point, is regulated. Briefing is under way.

D2006.3.39-Qwest Corporation's Notification to Offer Certain CLASS Features, AIN Features, Custom Calling Features, Listings and Packages as Not Regulated: This case pertains to Qwest asking the Commission to basically deregulate a certain number of services they provide. This case has been going on for quite some time and is awaiting a Commission order.

D2005.6.105-PSC Investigation into Qwest's use of USB Funds: The Commission initiated an investigation in 2005 into Qwest's use of USB funds. The Commission began the investigation under its own authority to order Qwest to use the USB funds a certain way. The Commission then issued a report on the investigation determining they did have jurisdiction on this issue, are recommending several ways in which the USB funds could be directed. MCC intervened fairly early in this case but did not take an active role, mainly because MCC is not convinced of the Commission's argument regarding their authority on this matter. The Commission hired their own expert witness and, within the Commission staff, created an advocacy staff and an advisory staff. Qwest also hired an expert witness and in testimony proposed eliminating extended area service charges and some zone charges in Qwest service territory. MCC filed testimony suggesting the Commission treat USB funds as customer contributed capital. The schedule has been suspended due to discovery disputes but should be reinstated fairly soon. Representative Groesbeck recalled Al

Buckalew stating in his testimony that there is approximately \$77 million dollars in the USF fund that Qwest has booked as revenue and Representative Groesbeck understood that is not the intended purpose of how that money should have been collected and distributed. Representative Groesbeck also understood that Mr. Buckalew recommended that Qwest rates be decreased 14% if that money was applied. Mary said this was correct and said if the \$77 million, or a portion of that, is treated as customer contributed capital the effect would be to reduce Qwest's rate base. However, that would not automatically translate into a 14% decrease because of the issue of a Qwest rate case, which is related to the Supreme Court case Cause No. CDV 2003-464 - Qwest v. PSC and MCC.

Intercarrier Compensation

Intercarrier Compensation (ICC) involves how telephone companies compensate each other for use of their networks. This issue puts providers against each other and there usually is a lot of money involved so these cases can be rather controversial and complex. There has been development recently on this issue and it will more than likely take several years to come up with a plan acceptable to everyone or that at least can be imposed on everyone.

Court Cases

Cause No. CDV 2003-464 - Qwest v. PSC and MCC: This case is a matter of the Commission asking Qwest for financial information. Qwest objected to the filing and took the issue to District Court. The conclusion was that the Commission does have the authority to gather information from Qwest, but the District Court concluded that they must request the information a different way.

Arbitration

D2005.12.174 - Level 3 Communications: In 2005, Level 3 asked for arbitration of an interconnection agreement with Qwest. Level 3 has since asked the Commission to allow them to withdraw, due to the outcome of arbitration in other states, and also asked the Commission to use some standard terms and conditions offered by Qwest that had not been updated since 2002. Qwest objected to this but the Commission has granted Level 3 permission to withdraw from the arbitration but has ordered the parties to continue negotiations so this issue may end up back before the Commission at a later date.

Complaint

D2006.10.143-Doty et al. v. Qwest Corporation: This complaint involves Russell Doty and other Qwest customers against Qwest regarding Qwest's over earning its authorized rate of return. This case is currently suspended due to discovery disputes.

HIRING OF EXPERT WITNESSES

MOTION: Representative McNutt moved approval to hire the services of the following expert witnesses:

D2007.5.46 NWE Electric Tracker-John Wilson

D2007.7.79 MDU Electric Rate Increase-John Wilson, Al Clark, Jack Pous

D2007.6.60/D2007.6.61 Ronan/Hot Springs/Verizon Bona Fide Request-Al Buckalew

D2007.7.86//D2007.7.87 Ronan/Hot Springs/Verizon Bona Fide Request-Al Buckalew

VOTE: The motion passed unanimously.

FINANCIAL REPORT

Both July and August reports were presented to the committee. The August report only shows one month of activity but the July report reflects fiscal year 2007. In 2007, 16% of the salary budget remained because of vacant positions. For contracted services, the base appropriation was used and about one third of the contingency was needed. There was money remaining in supplies, travel and communications, again due to the vacant positions, but the other categories were used within budget. Roughly \$81,000 will carry over to fiscal year 08.

PAY PLAN IMPLEMENTATION

Due to MCC's exempt status as a legislative agency, any pay plan changes do not automatically apply but MCC is granted appropriation for pay plan implementation. About 10 years ago Legislative Services contracted with NCSL to put together a salary study. MCC's committee at that time felt it unnecessary to do a separate study and felt MCC could use the legislative branch pay plan as a guideline. This is becoming more and more difficult to do, especially now that the legislative branch is making adjustments as part of the broadband pay plan study. Bob still references the legislative branch pay plan, trying to align MCC positions with those of the legislative branch but despite this, MCC has historically fallen behind. A comparison was given to the committee for reference. Bob recommended the following percentage increases:

Bob-5%
Mary-6%
Larry-3.6%
Frank-3.6%
Mandi-3.6%

MOTION: Representative McNutt moved approval of the percentage increases that Bob recommended beginning with the pay period that includes 10/1/07 and 3.6% beginning with the pay period that included 10/1/08.

VOTE: The motion passed unanimously.

Public Comments

Based on HB94 requirements, a public comment period was offered, but none was given.

Adjournment

There being no further business to come before the committee, the meeting adjourned.

Respectfully submitted,

_____, Robert Nelson, Consumer Counsel

Accepted by the Committee this _____ day of _____, 2008

_____, Chairman.